STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of KATTIERA LAMAY CROMER and AYRIEL MITANNI TAYLOR, Minors.

DEPARTMENT OF HUMAN SERVICES, f/k/a FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

KYLE E. TAYLOR,

Respondent-Appellant,

and

AUTUMN GINEEN MCKNIGHT-CROMER,

Respondent.

UNPUBLISHED
August 22, 2006

No. 266963
Wayne Circuit Court
Family Division
LC No. 02-414928-NA

In the Matter of EMMANUEL STEPHON CROMER, EMALACHI KENNETH CROMER, EMIL CROMER, KATTIERA LAMAY CROMER, and AYRIEL MITANNI TAYLOR, Minors.

DEPARTMENT OF HUMAN SERVICES, f/k/a FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

AUTUMN GINEEN MCKNIGHT-CROMER,

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KYLE E. TAYLOR,

Respondent.

Before: Saad, P.J., and Jansen and White, JJ.

PER CURIAM.

Respondents appeal from a trial court order that terminated the rights of respondent Autumn Gineen McKnight-Cromer to all of the children under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j), and conditionally terminated the rights of respondent Kyle Taylor to Kattiera and Ayriel under MCL 712A.19b(3)(b)(i). We affirm.

I. Standing of Kyle Taylor

The children at issue were born when Ms. Cromer was married Titus Cromer, who is not a party to this appeal.[1] In the trial court, the parties debated the status of Kyle Taylor, who was alleged to be the biological father of Ayriel and Kattiera. The court allowed Taylor to participate in the termination trial on the basis of his status as a nonparent "respondent" and because of his possible "springing" rights. The trial court terminated Taylor's parental rights, conditional on a court finding that he was the legal father of the children.

Whether a party has standing to bring an action is a question of law that we review de novo. *In re KH*, 469 Mich 621, 627-628; 677 NW2d 800 (2004). As a matter of law, Taylor was not a respondent at the time of the termination trial, and he lacked standing to assert paternity of the children. If Taylor had standing in this matter at all, it was as a nonparent adult alleged to have committed an offense against the children. Such a person is defined as a "respondent" pursuant to MCR 3.903(C)(10), *except* as provided in MCR 3.977, the rule governing proceedings for termination of parental rights. MCR 3.977(B) contains its own definition of "respondent" as:

> (1) the natural or adoptive mother of the child;
>
> (2) the father of the child as defined by MCR 3.903(A)(7).[2]

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[1] Mr. Cromer's rights to all of the children were terminated on May 25, 2004.

[2] MCR 3.903 (A)(7) defines father as:

> (a) A man married to the mother at any time from a minor's conception to the minor's birth, unless a court has determined, after notice and a hearing, that the minor was conceived or born during the marriage, but is not the issue of the marriage;

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Pursuant to MCR 3.903(A)(7)(a), Mr. Cromer was the legal father of Ayriel and Kattiera because they were born during his marriage to Ms. Cromer. In *In re KH*, *supra*, our Supreme Court examined the Paternity Act, MCL 722.711, *et seq.*, and concluded "that a determination that a child is born out of wedlock must be made by the court before a biological father may be identified in a child protective proceeding." *Id.* at 633. The Court also noted,

> [b]y requiring a previous determination that a child is born out of wedlock, the Legislature has essentially limited the scope of parties who can rebut the presumption of legitimacy to those capable of addressing the issue in a prior proceeding – the mother and the legal father. . . . If the mother or legal father does not rebut the presumption of legitimacy, the presumption remains intact, and the child is conclusively considered to be the issue of the marriage despite lacking a biological relationship with the father. [*Id.* at 635.]

Further, the Supreme Court held in *In re CAW*, 469 Mich 192; 665 NW2d 475 (2003), that the termination of the legal father's parental rights "was not a determination that [the child] was not the issue of the marriage and, thus, that [the legal father] was no longer his father; rather, it was only a determination that [the legal father']s legal rights were terminated." *Id.* at 199. Here, Taylor had no standing to assert parental rights because there has been no determination that the children were born out of wedlock. While Taylor asks us to remand this case for a determination of whether the children were born out of wedlock, we decline to do so. The trial court gave Taylor an opportunity to prove his assertion of paternity and he failed to do so.

Moreover, we decline to remand because, assuming the trial court determined that the children were born out of wedlock and that Taylor established that he is the father, the result would remain the same. Indeed, if Taylor had parental rights to Kattiera and Ayriel, it is clear that at least one ground for termination of his parental rights was established by clear and convincing evidence. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1998). Taylor severely abused Emalachi, a sibling of Kattiera and Ayriel, and was convicted of third-degree child abuse

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> (b) A man who legally adopts the minor;
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> (c) A man who by order of filiation or by judgment of paternity is judicially determined to be the father of the minor;
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> (d) A man judicially determined to have parental rights; or
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> (e) A man whose paternity is established by the completion and filing of an acknowledgment of parentage in accordance with the provisions of the Acknowledgment of Parentage Act, MCL 222.1001, *et seq.*, or a previously applicable procedure. For an acknowledgment under the Acknowledgment of Parentage Act, the man and mother must each sign the acknowledgment of parentage before a notary public appointed in this state. The acknowledgment shall be filed at either the time of birth or another time during the child's lifetime with the state registrar.

Paternity may be established under MCR 3.903(A)(7)(e) only when the child is born out of wedlock. MCL 722.1003.

as a result. His abuse of Emalachi is evidence that he is likely to treat the other children similarly. *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001); *In re Laflure*, 48 Mich App 377, 392; 210 NW2d 482 (1973). Furthermore, Taylor's threat to the life of the maternal grandmother during these proceedings indicates that his violent tendencies and disreputable character remain unchanged. The trial court did not clearly err in its conditional conclusion that Taylor severely abused a sibling of the children and the children were likely to suffer similar abuse if placed in his care. MCL 712A.19b(3)(b)(i); MCR 3.977(J).

Moreover, pursuant to statute, Taylor was not entitled to services directed toward reunification. Reasonable efforts toward reunification are not required when there is a judicial determination that a parent has subjected the child or a sibling of the child to battering, torture, or severe physical abuse. MCL 712A.19a(2)(a); MCL 722.638(1)(a)(iii). Taylor's conviction of third-degree child abuse for beating Emalachi constitutes such a judicial determination.

II. Termination of Autumn Cromer's Parental Rights

Ms. Cromer challenges the sufficiency of the evidence for the termination of her parental rights. The trial court did not clearly err by finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(J); *In re Miller, supra* at 337. The primary condition of adjudication was Ms. Cromer's failure to protect the children from Taylor. Though she was advised at the outset that her children would not be returned to her if she continued to associate with Taylor, Ms. Cromer continued a relationship with Taylor throughout these proceedings. As recently as February 2005, Ms. Cromer brought a present from Taylor for one of the children and, throughout this matter, Ms. Cromer has lived in a house owned by Taylor's mother. This evidence clearly justified the trial court's conclusion that the primary condition of adjudication, respondent mother's failure or inability to protect the children, continued to exist. MCL 712A.19b(3)(c)(i).

The trial court also correctly found that there is no reasonable likelihood that this condition would be rectified within a reasonable time considering the ages of the children. *Id.* Though Ms. Cromer completed counseling and parenting classes, she failed to appreciate the seriousness of the conditions that brought the children into care. Indeed, she maintained that her mother, who sought medical attention for Emalachi's injuries, was the cause of the children being brought into care. Ms. Cromer's continued contact with Taylor over three years offers convincing evidence that she does not appreciate the need to protect the children from him.[3] Under these circumstances, it is reasonable to conclude that the condition of adjudication will not be rectified within a reasonable time considering the ages of the children, and the trial court did not clearly err in so finding.[4]

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[3] Ms. Cromer's argument that the trial court acted to punish her for her relationship with Mr. Taylor underscores the appropriateness of the trial court's ruling. Ms. Cromer's argument reflects a continuing failure to recognize the need to protect the children from Taylor, which has been the core concern throughout this case.

[4] We conclude that statutory subsection (c)(ii) was not an appropriate ground for termination and the trial court clearly erred by relying upon it. The trial court apparently considered the "other

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The trial court also correctly terminated Ms. Cromer's rights under statutory subsection (g). Ms. Cromer failed to provide proper care and custody for the children by failing to protect her children from Taylor. The above evidence indicates that the condition of adjudication is not likely to be rectified within a reasonable time and also demonstrates that there is no reasonable likelihood that Ms. Cromer will be able to provide proper care and custody for the children within a reasonable time considering the ages of the children. MCL 712A.19b(3)(g).[5]

We hold that the trial court also properly found that there was a reasonable likelihood that the children would be harmed if returned to Ms. Cromer. MCL 712A.19b(3)(j). Her lack of adequate housing or income adequate to support the children strongly suggests that they would not have a safe and stable environment if returned to her. Further, again, Ms. Cromer failed to appreciate the seriousness of the reasons for the court's jurisdiction as shown by her continued contact with Taylor throughout this case. Simply stated, it is reasonable to conclude that the children would be harmed if returned to her care, and the trial court did not clearly err in so finding.

Finally, the trial court correctly ruled that termination of Ms. Cromer's parental rights was not clearly contrary to the best interests of the children. The evidence does indicate a positive bond between Ms. Cromer and the children, and her behavior with them at visits was appropriate. However, the children have been out of her care for three years and, in that time, Ms. Cromer failed to demonstrate that she can protect the children from Taylor, who was convicted of third-degree child abuse for his criminal and inhumane beating of Emalachi. The children have done well in the care of their maternal grandmother, with whom they have been placed for the duration of this matter. On this record, we are not left with an impression that the trial court made a mistake in its best interest determination. *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000).

Affirmed.

/s/ Henry William Saad
/s/ Kathleen Jansen
/s/ Helene N. White

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condition[]" to be its own recent ordering of respondent not to have any contact with Mr. Taylor. The order itself, however, is not an "other condition[]" causing the children to come in the court's jurisdiction, but merely a remedial measure directed to the original condition of adjudication, that is, respondent mother's failure to protect the children from Mr. Taylor. Therefore, termination under MCL 712A.19b(3)(c)(ii) was not warranted.

[5] Further, Ms. Cromer lacked suitable housing at the time of the termination trial. She never provided documentation that she was buying a house as she verbally represented, and the house in which she resided was not suitable for the children. According to the maternal grandmother, when she visited the home, there was no running water and a stench in the house. Ms. Cromer's parent-agency agreement required her to obtain and maintain income and housing suitable for the children. Her failure to comply is further evidence of her inability to provide proper care and custody for the children. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003).